

Bainbridge Township, Ohio
Board of Zoning Appeals
February 21, 2013

Pursuant to notice by publication and certified mail, the public hearing was called to order at 7:05 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis and Mr. Mark Murphy. Mr. Joseph Gutoskey and Mr. Mark Olivier were absent. Ms. Karen Endres, Zoning Inspector was present.

Mr. Lamanna welcomed everyone to the regular meeting of the Bainbridge Township Board of Zoning Appeals. He then explained the hearing process and swore in all persons who intended to testify. He explained to the applicant that there are only three board members present and a majority of the board (three members) must vote yes for the variance to be granted. He gave the applicant the option of continuing the application to the next month. The applicant chose to hold the hearing.

Application 2013-1 by Elisa and Tim Carney for property at 18750 Brewster Road

The applicant is requesting area variance(s) for the purposing of installing a fence. The property is located in a R-3A District.

Ms. Elisa Carney and Mr. Tim Carney were present to represent this application.

Mr. Lamanna asked if it is the fence height because it is in the front yard.

Ms. Carney testified by saying yes and they would like to erect an 8' tall fence down one side of their property for privacy and according to the zoning resolution the way they have it worded is any structure that sits in front of her property is her front yard. She said the board can see that where her house sits which is way far back from the road, that is a whole lot of front yard.

Mr. Lamanna said this is a classic flag lot.

Ms. Carney showed the board on the GIS aerial where her property is located and said they are okay with the 4' fence because it doesn't obliterate traffic which is what the issue is according to zoning. She explained where the fence will start and will go down to approximately here (she referred to the GIS aerial), 8' tall. She said they just want to have their privacy and it doesn't block anybody's view and the traffic, it would not block any of that.

Mr. Lewis asked if that is a shared driveway.

Ms. Carney said not anymore.

Mr. Lamanna said so there was some litigation between you and the neighbors.

Ms. Carney replied yes.

Mr. Lamanna asked what the upshot was of that.

Ms. Carney said they (neighbors) got tossed off the driveway and they had to put in their own driveway which it doesn't show it now but they put in their own driveway.

Mr. Murphy asked off of Brewster or Pettibone.

Ms. Carney said they put it off of Brewster.

Mr. Lamanna asked if that is because there was some prior agreement.

Ms. Carney said there was never an agreement but there was destruction to the driveway by the people that own that house, the Giglios and they did not want to pay for the repair of what they destroyed on the driveway so it went to court.

Mr. Lamanna said he just wanted to know a little bit of the background here.

Ms. Carney said they put in their own driveway but it doesn't show it on the map and it is parallel to ours on their property.

Mr. Lamanna said so you have two side-by-side driveways.

Ms. Carney replied yes and the other house is owned by the Stitts and we are still sharing the driveway.

Mr. Murphy asked if there is an agreement or easement with them (Stitts).

Ms. Carney replied no, just a gentleman's agreement at this point.

Mr. William Giglio testified that he is the one that put the drive in.

Mr. Lewis asked how far the houses are apart.

Mr. Giglio said about 250 yards.

Mr. Lamanna swore in Ms. Kim Stitts, neighbor.

Mr. Lewis said your houses are 500 feet apart and if you want to put a fence between the two driveways, when he looks at the houses, the fence doesn't go in that site-line, you can stand in one house and see the other house.

Mr. Giglio said there is a forest throughout that area.

Mr. Lewis said if the fence was for privacy, you are splitting between two parallel driveways and from this house and this backyard (he referred to a site plan), you have full visibility here back and forth.

Mr. Giglio said there are no adverse conditions and he thinks we all know what is going on, it is a spite fence, there is no reasonable purpose. He said with the litigation, he guesses the coals are still burning a little bit and that is the purpose and that is the reason they are trying to block him looking out to his front yard. He said she threatened that before the litigation that she was going to put up the wall of China.

Ms. Carney said the problem being is that the Giglio property has become cluttered, there are piles of things in the forest, it is unsightly and it is being a degradation to the neighborhood. She said the Stitts and the Carney homes are quarter of a million dollar homes and we keep our properties nice but the Giglio property is unkempt and unsightly.

Mr. Giglio said according to you (Ms. Carney).

Ms. Carney said she has pictures and according to the zoning, the Giglios have been cited for their junk.

Mr. Lewis asked if she had a copy of the citing by the zoning department for a violation.

Ms. Carney replied yes.

Ms. Karen Endres, Zoning Inspector testified that she has not been on the Giglio property but she has seen a lot of clutter from the Carney driveway. She said he was cited for non-permitted structures but they have cooperated in getting two of the permits for the structures and one will require a variance.

Mr. Murphy said this zoning violation was submitted on December 19, 2012 so it is just two months ago.

Ms. Endres said he acquired a permit for his fence, he applied for a permit and she issued a permit for his fence.

Mr. Murphy asked what was in violation.

Ms. Endres said for non-permitted structures. She said he had a fence, a carport, a shed and a two Quonset huts. She said he acquired a permit for the shed and fence and she disapproved the application for the carport because it is less than 50' from the lot line and will require a variance.

Mr. Lamanna asked about his fence.

Ms. Endres said his fence is in front of his house.

Mr. Lamanna asked where his front yard is now and if it is on Brewster.

Mr. Giglio said his house faces south.

Ms. Endres said the house faces south but the front yard is where the driveway is.

Ms. Carney said the Quonset huts that he was told to remove were taken down, the tarps are now on the ground and the Quonset hut is now in the forest and the pallets in the forest that we look at and a car that doesn't run anymore that we look at, more pallets, pallets and pallets. (She submitted photos to the board).

Mr. Lewis said looking at where your house is (Ms. Carney) and he referred to the site plan. He said with this proposed fence, it appears to be the only line of site beneficiary and that is this house (he referred to the site plan) and if you don't want to see that, why are you not talking about putting a fence up on your property line here.

Ms. Carney said this is so far away, we don't see it in the wintertime but driving down the driveway, we see all of this.

Mr. Lewis said he understands but when he drives down his driveway he can see things in his neighbor's yards too.

Ms. Carney asked do you see pallets.

Mr. Lewis said this gentleman (Mr. Giglio) is working with the zoning inspector and has made an effort to satisfy what is required, he has taken some things down and it is still the dead of winter and this notification is only six, seven or eights week old and he knows it has been snowing and has been cold, the structures are down. He said from his (Mr. Giglio's) point of view your cooperation with the township and the zoning he would really like to see a significant spring clean-up effort on your property, at a time that is practical, at least the things that were taken down.

Mr. Giglio said he has a '53 Ford, a '75 John Deere and an '87 Jaguar.

Mr. Lewis said as you are driving down the driveway you are asking for an 8' fence so as you glance when the trees don't have leaves you don't have to see some debris that is taken care of in the woods but the location of the fence is not between your two houses so from residents to residents this proposed fence has absolutely zero impact on your line of site.

Mr. Lamanna asked what kind of a fence is existing on the Giglio property.

Mr. Giglio said a white picket fence, a split rail about 3' high and the white is 3-1/2' or 4'.

Mr. Lamanna asked if there is any issue with that fence, it is a side yard fence.

Ms. Endres said it complies with zoning.

Mr. Murphy asked if you need a permit for a residential decorative fence in a yard.

Ms. Endres replied yes per Bainbridge zoning.

Mr. Lamanna said a zoning certificate because people confuse it with building permits and sometimes you need both or one and not the other, none or one or the other.

Ms. Endres said the building department doesn't need to get involved with fences.

Ms. Carney asked if an 8' fence is not possible would she be permitted to plant a row of trees instead.

Mr. Lamanna said you can plant whatever you want on your property.

Mr. Lewis said he would like to caution Ms. Carney so another conflict is not created, is if she plants trees on her property, be conscious of where they are planted so that the span of them doesn't encroach on the other property.

Mr. Lamanna asked how far from the road the fence starts because he is looking at what the code says which is in any "required" front yard no fence or wall shall exceed 4' in height. He said this says required front yard, it doesn't say the front yard so the only required front yard is the mandatory setback from the road, as he would read that because otherwise what does the word required mean, why would the word required be in there if it didn't refer to whatever the required setback was for that property.

Ms. Endres said that could be interpreted very easily.

Mr. Lamanna said otherwise there would be no point in having the word required in there, if it meant front yard all it would have to say is that in any front yard no fence or wall shall be permitted.

Ms. Carney asked if required is working in her favor or against her.

Mr. Lamanna said it is working in her favor because it would mean this rule would only apply for the first 150' of setback which in some cases wouldn't make some sense because otherwise you could have some bizarre situation where if you have two houses side by side and one person is 150' and the other person is only 100' back, the one person could start a fence at their house and go backwards 8' high but the other person on the other side of the line could not erect that same fence from that same point and go backwards without getting a variance so there is kind of a practical reason why you would say a required front yard so that adjacent property owners would be on equal footing and part of the purpose is we don't want high fences running down to the road or impeding the setback area. He said we have got the same thing with the Giglio line, he could put an 8' high fence up along that same point starting back 100' all the way along that line so now you get into the position that the one property owner is allowed to do it but the other property owner wouldn't be allowed to do it. He said whatever the merits or demerits of putting up a fence along here are, he won't comment on that. He said his suggestion would be starting a fence where the property line cuts the angle off (he referred to the GIS aerial photo) and go plant trees or shrubs along the area in front of the house that would be a far more neighborly thing to do. He said that would cut off the Stitts' line of site if the fence came down to the point where the property line bends so you would get the benefit of the fence there.

Mr. Lewis said he is just trying to get a sense (he referred to the site plan) we are talking about from this point to this point and he knows in this area there were some things. He asked what is left in this area.

Mr. Giglio said he has the Quonset hut and he has some granite there also because they are planning on putting in a patio this summer.

Mr. Lewis said part of the request is for an 8' fence and if the tall structures are down an automobile is certainly not 8' tall and nor necessarily is a tractor, he is thinking about, you have got a vehicle going down the street, the line of site is not what somebody is seeing standing on their front porch that bothers them, apparently is when he is driving by he doesn't want to look at your stuff. He said when you are sitting in the car your head is only 3' off the ground anyway, if you don't have any tall stuff left, quite frankly, he needs to hear an awful lot of convincing of what the purpose of an 8' fence is and the line of site isn't over 4' or 5' anyway and if we have a 4' fence and you are doing housekeeping, he just wants to be sure he got the gist of that.

Ms. Endres said that Mr. Lamanna had a good point too about the front yards and the interpretation and she could have interpreted this a different way also.

The board discussed the application.

Ms. Carney said a 4' fence would not prevent Mr. Giglio from throwing things at her car when she drives by.

Mr. Lewis asked Ms. Carney if she has police reports.

Ms. Carney said she does and he threw snowballs and rocks and it chipped her front windshield.

Mr. Lewis asked if Mr. Giglio has been cited by the Bainbridge Police Department.

Ms. Carney said no because they said it was his word against hers.

Mr. Giglio said this is not the time to do this.

Mr. Lamanna said no we are not here to deal with that except, remember at the moment his inclination is to say that his interpretation of the statute is that it is the required front yard and the required front yard is the front yard that the zoning requires in this district which is 100' from the road and this whole area is not subject to any restrictions.

Ms. Endres said but 8' would be the maximum.

Ms. Carney asked if they could plant trees and not build a structure but they have to have some insurance that the trees will be able to grow there and Mr. Giglio won't do something to the trees.

Mr. Lamanna said that is a criminal offense to come over and damage somebody else's trees.

Ms. Carney said but she would have to prove it and that is the problem.

Mr. Lewis said put up your wireless camera and have it talk to your computer.

Mr. Lamanna said as with all things the way people do things is if it is in their interest to do it and if both the parties have an interest in doing something usually it gets done right. He said in this case if the fence is put up on part of the property and trees are on part of it, fine but if the trees are tampered with and the trees don't work then your neighbor has to understand that you have the right to then come back and put up an 8' high fence so it is really not going to be in his interest to fool around with the trees if you put trees up in front of his house because the alternative is that the trees will go away then a fence will go up and it will be nicer to look at trees than to look at a fence so it is in your (Mr. Giglio) interest to make sure the trees are a successful thing.

Mr. Giglio said he started growing trees on that line anyway.

Mr. Lamanna said he understands that sometimes the neighbors have problems and sometimes the problems can be somewhat intractable, he has been on this board for 20 years and we have had our share of the Hatfields and McCoys but this is by far not the worst of them. He said they had one that was so bad they had to have police officers here for the hearing because things were that acrimonious and we were concerned that there could be bad things happening so this is far from that but he would suggest that we take that approach in the interest of being neighborly. He said if Ms. Carney wants to put a fence on the property where it takes a little jog, that would make sense because it would block off the other fence from it and it would also not be in Mr. Giglio's front yard so that might be kind of a good way to do it in a neighborly fashion. He suggested putting in some trees that would look nicer knowing that he is not going to really want to tamper with them because the alternative is a fence.

Ms. Carney told Mr. Lamanna that she likes his way of thinking.

Mr. Lamanna said everybody is happier if we do the best we can to get along with our neighbors and that is certainly one of the big factors that we always consider which is the impact on the neighboring properties so we would like that to happen.

Mr. Murphy said since Mr. Lamanna has more experience on the board than he does and with the legal reading of it he would not disagree with him regarding the required front yard.

Mr. Lamanna said he doesn't fault the zoning inspector because the appropriate thing is for her to send this here, the board can look at it and we can put our multiple heads together here as a board and look at issues like this and as you can see it is somewhat an issue of interpretation but that is the conclusion he would come to. He said technically it would be considered zoning inspector error.

Ms. Endres said she tends to err on the side of caution.

Mr. Lamanna said he never wants this to be viewed as some sort of criticism of the zoning inspector because if there is any doubt at all it is the board's responsibility to make a decision.

Ms. Kim Stitts testified that it has been a couple of years with this and she agrees with Ms. Carney, she doesn't want to ride by and see a bunch of junk and she wishes they could all be happy and live as before.

Mr. Lamanna said all of you had a chance to be here and air concerns and issues and hopefully go back with a little understanding of what this board thinks although we don't have the legal authority to compel anybody to do anything, certainly if people aren't cooperative you just better hope you don't have to come back here for some other matter or need some other consideration from the township because you might find that people aren't quite willing to accommodate you if you don't try to work this thing out amongst yourselves and the board certainly would appreciate that.

Mr. Murphy said there are some regulations about storing unlicensed vehicles and inoperable vehicles.

Mr. Lamanna said it is not in anybody's interest to get all kinds of regulatory bodies out looking around with a fine tooth comb at your property because they often find things that you would not expect them to find. He said people have made a lot of complaints and suddenly find out that the zoning inspector happens to know some things that they have done that don't meet the legal requirements.

Ms. Carney asked if she didn't need a variance for what she wanted to do.

Mr. Lamanna said the board is going to decide tonight that she does not need a variance for what she wants to do.

Ms. Carney said so she should just file for a permit if she needs to.

Mr. Lamanna said yes if you need to.

Mr. Giglio asked if he can appeal this decision.

Mr. Lamanna said it can be appealed to the court of common pleas once it becomes final when the minutes are approved and then you have 30 days after that to file a notice of appeal with the courts.

Mr. Giglio said he guesses he will need to do that.

Mr. Lamanna said if you want to contest the decision.

Ms. Carney said they prefer to plant the trees but the trees better live.

Mr. Lamanna said if you have to appeal you have to convince the court that the board's interpretation code isn't correct. He said you would have to prove that we didn't have a reasonable basis for determining this and it would be a very difficult litigation.

Mr. Giglio said in 1995 this board approved variances about the drives coming through.

Mr. Lewis said right and he thinks that got resolved with Judge Fuhry.

Mr. Lamanna said this is the problem with shared driveways with parties getting into a disagreement.

Ms. Carney said and then you have a problem.

Mr. Lamanna said then we have to regulate the easement agreement and make sure there is some kind of enforcement action to make sure that everybody lives up to their obligations and people don't use a lot of thought sometimes on these easement things and if you want an easement then you need to have an agreement that has a mechanism that if somebody doesn't pay their fair share of the upkeep then the other parties can do it and it becomes a lien on their property and the township is trying to police that so that is why these things have kind of been squelched back quite a bit.

Since there was no further testimony, this application was concluded.

Motion BZA 2013-1 – 18750 Brewster Road

Mr. Lamanna made a motion that the board finds that based upon its review of the facts presented and its review of the applicable section of the zoning law that it provides that the limitations are in any "required" front yard and that term means that this provision only applies in the setback distance that is required in that zoning district for the principal structure and in this case none of the fence that was requested was located in the required front yard setback for the affected property and therefore the board is determining that the requirement for a variance was erred by the zoning inspector.

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye.

Since there was no further testimony, the public hearing was closed at 7:54.M.

Respectfully submitted,

Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy

Attested to by: Linda L. Zimmerman, Secretary
Board of Zoning Appeals

Date: March 14, 2013

AUDIO RECORDING ON FILE

BZA PH 2/21/2013

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Bainbridge Township, Ohio
Board of Zoning Appeals
February 21, 2013

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 7:54 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis and Mr. Mark Murphy. Mr. Joseph Gutoskey and Mr. Mark Olivier were absent. Ms. Karen Endres, Zoning Inspector was present.

Minutes

Mr. Lamanna made a motion to adopt the minutes of the January 17, 2013 meeting as written.

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye.

Work Session

The board held a work session on the Comprehensive Zoning Resolution Re-write and discussed a list of criteria that has been repetitive zoning issues that should be considered for change. It was noted that Kendig Keast Collaborative will be holding a Webex Teleconference on February 26, 2013 with the Zoning Commission.

Meeting Schedule

Mr. Lamanna made a motion to hold the next regular meeting on March 14, 2013 instead of the scheduled date of March 21, 2013.

Mr. Lewis seconded the motion that passed unanimously.

Applications for March 14, 2013

Application 2013-2 by George Talley for property at 16801 Medina Street

The applicant is requesting area variance(s) for the purpose of constructing an attached garage. The property is located in a R-3A District.

Application 2013-3 by Parkside Church for property at 7100 Pettibone Road

The applicant is requesting a renewal and modification to a previously granted conditional use permit for the purpose of modifying the previously approved building plans and to extend the right-turn only access lane crossing the former VFW property owned by the applicant. The property is located in a R-5A District.

Application 2013-4 by Michael Lowe for property at 9380 E. Washington Street

The applicant is requesting a substitution of a non-conforming use for the purpose of establishing a basement waterproofing business. The property is located in a R-5A District.

Application 2013-5 by Michael Lowe for property at 9380 E. Washington Street

The applicant is requesting a substitution of a non-conforming use for the purpose of establishing a car dealership and service area. The property is located in a R-5A District.

Application 2013-6 by Circle Park LLC for property at 16925 Park Circle Drive

The applicant is requesting area variances for the purpose of constructing an accessory building. The property is located in a LIR District.

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above application for March 14, 2013 at 7:00 P.M. at the Bainbridge Township Community Hall, 17826 Chillicothe Road, Bainbridge Township, Ohio and unanimously resolved to request the Bainbridge Township Board of Trustees to issue a purchase order for legal advertising.

Since there was no further business, the meeting was adjourned at 9:50 P.M.

Respectfully submitted,

Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy

Attested to by: Linda L. Zimmerman, Secretary
Board of Zoning Appeals

Date: March 14, 2013